

EXHIBIT G

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH



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ELAINE CHATFIELD, as
Personal Representative
of the ESTATE OF
ELSIE LOUISE GRAHAM,

Plaintiff,

vs.

CASE NO. 21CV40522

AVON PRODUCTS, INC., et al.

Defendants.



VERBATIM TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 8

HELD ON
MONDAY, FEBRUARY 6, 2023
9:02 A.M.

BEFORE
THE HONORABLE SHELLEY RUSSELL
CIRCUIT COURT JUDGE

MULTNOMAH COUNTY COURTHOUSE, 15TH FLOOR
1200 SOUTHWEST FIRST AVENUE
PORTLAND, OREGON 97204

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	1542	1544
1	APPEARANCES	1 EXHIBITS
2		2 DEFENDANT'S EXHIBITS: RETAINED BY COUNSEL
3	For the Plaintiff:	3 No. Description Admitted
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2	Page	2 TRIAL - DAY 8
3	PLAINTIFF'S WITNESSES	3 HELD ON
4	STEVEN HABER, M.D.	4 MONDAY, FEBRUARY 6, 2023
5	Direct Examination by Ms. Dean	5 9:02 A.M.
6	Cross-Examination by Mr. Cook	6 BEFORE
7		7 THE HONORABLE SHELLEY RUSSELL
8		8 CIRCUIT COURT JUDGE
9		9
10		10 (Jury enters.)
11		11 THE COURT: Good morning. We are back on
12		12 the record. This is day 11 in the trial in the
13		13 State of Graham versus Whittaker, Clark & Daniel.
14		14 How is everybody doing this morning? Good,
15		15 all rested, and ready go? Back at it. Okay. We're
16		16 going to be continuing with plaintiff's case this
17		17 morning. I do have his little scheduling matter.
18		18 We're going to take a slightly longer lunch today
19		19 because of a commitment that I have over the lunch
20		20 hour that I will have to get to and get back from.
21		21 So we're going to break at 11:30 or shortly
22		22 thereafter this morning. We will still take our
23		23 mid-morning break, but we'll make it about a 10-
24		24 minute break today instead of 15. And with that,
25		25 please, remember to turn off your cellphones and

1 please the Court, members of the jury.
 2 CROSS-EXAMINATION
 3 BY MR. COOK:
 4 Q Doctor, Eric Cook on behalf of Whittaker,
 5 Clark & Daniels.
 6 A Mr. Cook.
 7 Q I've got a little over an hour today to
 8 try and do this, and then I understand we're going
 9 to try to pick up tomorrow afternoon if we don't
 10 finish this afternoon, okay?
 11 A Thank you.
 12 Q I want to start first with respect to the
 13 Moline 2020 article that you referenced on direct
 14 examination. You're, of course, familiar with that,
 15 correct?
 16 A Yes.
 17 Q And just to give the jury some orientation
 18 on that, in January 2020 the peer-reviewed Journal
 19 of Occupational and Environmental Medicine published
 20 an article titled Mesothelioma Associated with the
 21 Use of Cosmetic Talc, correct?
 22 A Yes.
 23 Q Dr. Jacqueline Moline was the article's
 24 lead author, true?
 25 A Yes.

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1 Q Okay.
 2 A -- yes.
 3 Q Do you understand that she's been retained
 4 in cases in which Ms. Dean was the plaintiff's
 5 lawyer?
 6 A No.
 7 Q Okay. The article itself claimed to be
 8 the first large case series to identify cosmetic
 9 talcum powder contaminated with asbestos as the
 10 cause of malignant mesothelioma in cosmetic talc
 11 users, correct?
 12 A Yes, I believe that's correct.
 13 Q Did you know that Dr. Moline testified to
 14 Congress about her findings?
 15 A No.
 16 Q Now, with respect to the study itself, it
 17 makes a very clear claim that there's no exposure or
 18 no potential exposures to asbestos other than from
 19 cosmetic talc, correct?
 20 A I don't think that they identified any
 21 other substantial exposures. I don't recall the
 22 exact wording.
 23 Q Okay. Would you agree -- and I can give
 24 you a copy of article, if that helps you, sir.
 25 A Okay.

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1 Q The article analyzed medical records and
 2 deposition transcripts for 33 anonymous individuals
 3 diagnosed with mesothelioma for whom Dr. Molina had
 4 conducted a medical legal evaluation as part of tort
 5 litigation, correct?
 6 A That's my understanding.
 7 Q And you understood that she had actually
 8 been retained by plaintiffs' lawyers in talc
 9 litigation and that that was the underlying cases
 10 that she used for her study, correct?
 11 MS. DEAN: Your Honor, objection. It's
 12 misleading. There's plaintiffs' lawyers and they're
 13 pointing to me. I think -- I've never hired her. I
 14 very much read her papers, but I think that's really
 15 confusing.
 16 THE COURT: Sustained.
 17 MR. COOK: Okay. I'll rephrase it without
 18 waving my hands, Your Honor.
 19 Q (BY MR. COOK) You understand that Dr.
 20 Moline had been retained by plaintiffs' lawyers in
 21 talc litigation and those cases were the basis of
 22 her 33 cases in the 2020 publication, correct?
 23 A I'm -- I may have -- I don't really know
 24 much about her, but I think I may have heard that
 25 that was the case --

1 Q If you look right at the objective, that
 2 might refresh your recollection, sir, the very top
 3 line.
 4 A Okay.
 5 Q All right. Would it be significant to you
 6 if we were able to find out the names of those
 7 individuals and track down that they had been
 8 exposed to asbestos and it was not from cosmetic
 9 talc?
 10 A If you want to show me something, I would
 11 be happy to look at that. That doesn't mean that on
 12 all of the cases or -- and it doesn't exonerate
 13 other exposures, but sure, I would be happy to look
 14 at something if you wanted to show it to me.
 15 Q Absolutely. So -- and let me just check
 16 first. Let's lay a little foundation. You would
 17 agree that it would be significant and contrary to
 18 the representations in the article if, in fact,
 19 there were individuals in that study that had sworn
 20 to exposures to asbestos that did not involve
 21 cosmetic talc, true?
 22 A No.
 23 Q Okay.
 24 A Because testifying that someone had an
 25 exposure doesn't mean that you had an exposure. So

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1 that doesn't mean that someone did, if they believed
 2 that they did.
 3 Q Okay. If someone swore under penalty of
 4 perjury that they were exposed to asbestos, that
 5 wouldn't be significant to you?
 6 A In -- with regard to what? I mean, people
 7 can not know that they had exposures and/or they
 8 think that they had exposures and that they weren't.
 9 It can go both ways. But just because someone
 10 believes that they did doesn't mean that they did.
 11 And just because -- and if someone believes that
 12 they didn't doesn't mean that they didn't.
 13 Q All right. Let's walk through -- let me
 14 show you this, sir. This is a federal court order
 15 in the Bell case. Are you familiar with that?
 16 MS. DEAN: Your Honor, may we approach?
 17 (In camera discussion from 3:33 p.m. to
 18 3:41 p.m.)
 19 THE COURT: We're going to move on?
 20 MR. COOK: Yes, Your Honor. Just one
 21 foundational question.
 22 Q Have you talked to Ms. Dean about the Bell
 23 decision?
 24 A Who?
 25 Q Have you talked to Ms. Dean about the Bell

1 true?
 2 A Right. I don't do those.
 3 Q You talked about exposure today with the
 4 jury, correct?
 5 A Right. But I don't do any sort of studies
 6 to try to do an exposure analysis.
 7 Q Okay. And dose array construction, that's
 8 not something that you do?
 9 A No, not from a -- typically from a
 10 qualitative. I do, as a pulmonologist, look at
 11 exposures from how -- the nature of the exposure,
 12 the intensity, the duration, that sort of thing.
 13 Q Okay. You've never designed a toxicology
 14 study that was accepted for peer review, true?
 15 A Right. I've not done what.
 16 Q Okay. The jury heard a lot about
 17 background or ambient exposures to asbestos. Do you
 18 agree that asbestos is a naturally-occurring
 19 mineral?
 20 A Yes.
 21 Q Mined all over the world?
 22 A Well, in a number of places. I'm not sure
 23 it's all over, but yes, it's certainly a number of
 24 places across the world.
 25 Q Okay. Dr. Brody talked about how it's in

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1 decision that I handed you?
 2 A No.
 3 Q Okay. All right. Doctor, can you explain
 4 to the jury the importance of peer review?
 5 A Well, peer review is where if someone
 6 publishes a paper, the paper is submitted to peers
 7 who review the paper and maybe check it factually or
 8 whatever, and then ideally it improves the quality
 9 of studies that are published.
 10 Q All right. You talked a fair amount today
 11 about cosmetic talc. Have you subjected your
 12 opinions on cosmetic talc to peer review?
 13 A I've never published on peer review on
 14 cosmetic talc.
 15 Q Have you designed an epidemiology study
 16 that's been accepted for peer review?
 17 A No. I mean, I've -- I did my -- my
 18 publication on mesothelioma was subject to peer
 19 review, but it was not -- it was a -- just a case
 20 series, not a cohort to control study.
 21 Q How many publications do you have on
 22 mesothelioma, sir?
 23 A Just the two.
 24 Q Two. Okay. You've never designed an
 25 exposure analysis that was accepted for peer review,

1 the air we breathe. Would you agree it's also in
 2 the water that we drink?
 3 A There may be some in certain waters. I
 4 mean, not in all water, but in certain waters there
 5 may be some fibers and they may again be like the
 6 background where it's small, small, short fiber.
 7 Q And you, of course, are familiar with the
 8 Agency for Toxic Substances and Disease Registry,
 9 correct?
 10 A Yes.
 11 Q And you're familiar specifically with the
 12 Toxicological Profile for Asbestos from September
 13 2001, correct?
 14 A I am.
 15 Q And I'll put it on the Elmo to help you,
 16 but I'll give you the page number as well.
 17 MR. COOK: If I can have the Elmo, please.
 18 Q (BY MR. COOK) It's going to be page 151,
 19 if you want to look at it yourself, sir.
 20 Are you ready, sir?
 21 A Yes.
 22 Q Okay. In 2001, the ATSDR wrote, "Fibers
 23 in water arise mainly by erosion of natural deposits
 24 of asbestos or by corrosion of fibers from pipes
 25 made with asbestos containing cement."

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1 time today, but this is Avon Code 0747. And I want
 2 to look at this specific date in a couple entries of
 3 September 20th, 1971, to illustrate a point.

4 If we go back here to one of the later
 5 entries, what we see is where Whittaker is actually
 6 an approved vendor for Avon Code 0768 --

7 A Right. These --

8 Q -- on that same date, September 20th,
 9 1971, right?

10 A Right. Because that was from North
 11 Carolina. That's the 2450.

12 Q And then what we see on that same date for
 13 Avon Code 0810, the approved vendor is Charles
 14 Mathieu, correct?

15 A Right. But this was the 4602.

16 Q Right. And so what we see, though, is
 17 Avon, when they're looking at the approved vendor,
 18 they're differentiating between Charles Mathieu and
 19 Whittaker, Clark & Daniels as far as the approved
 20 vendor, correct?

21 A Yes.

22 MR. COOK: All right. Your Honor, this
 23 might be a good point to stop for the day before I
 24 go into another topic, if we could.

25 THE COURT: All right. Members of the

1 THE COURT: 8024?

2 MR. ERAUT: Yes, Your Honor.

3 THE REPORTER: I'm sorry, Mr. Eraut. What
 4 was the first, the initial number?

5 MR. ERAUT: Remark exhibit referenced as
 6 D3 as 8024.

7 (Defendant's Exhibit No. D3 was remarked
 8 as 8024 marked for identification.)

9 THE COURT: So D3 is 8024.

10 MR. COOK: I just want to put on the
 11 record a short paraphrase of what occurred during
 12 the sidebar. Prior to that on the record there was
 13 an objection with respect to use of the Bell
 14 decision. The cite for that is 2022 U.S. District
 15 LEXIS 199 180. It's from the United States District
 16 Court for the Middle District of North Carolina,
 17 decided September 13th, 2022.

18 I think the article -- or, excuse me --
 19 the opinion itself lays out many of the reasons
 20 here. The Moline 2020 case series was raised on
 21 direct examination with the jury and represented as
 22 a publication in which there were no exposures to
 23 asbestos other than from cosmetic talc.

24 The Bell decision specifically found one
 25 of the individuals that was in the Moline case

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1 jury, we'll adjourn for the day and we'll return
 2 tomorrow morning. Please be here -- are you all
 3 able to be here by 845? We'll start a little bit
 4 earlier to make up for a little bit of the time we
 5 lost today. We're going to start at 8:45 tomorrow.
 6 Thank you. I appreciate that. We're going to
 7 adjourn for the day. Please do not discuss the case
 8 with anyone or do any research. Keep your notepads
 9 on the chairs. Thank you, everybody.

10 (Jury exits.)

11 THE COURT: So what we will try to do
 12 tomorrow morning is start a little bit early, 15
 13 minutes early, and we can take an hour lunch
 14 tomorrow, if that will help make up for some of the
 15 time that was lost today. And I'll let you all out.
 16 But you did want to put at least one issue on the
 17 record?

18 MR. COOK: If I may, Your Honor.

19 MS. DEAN: Is it okay if Dr. Haber leaves?

20 THE COURT: Yes.

21 THE WITNESS: Thank you, Your Honor.

22 (Witness excused.)

23 MR. ERAUT: Your Honor, before we get to
 24 that, I would like to remark the Exhibit reference
 25 of D3 as 8024, just to keep with consistency.

1 series had actually, while represented by counsel --
 2 and I'll read it specifically. This is from page 16
 3 of the decision -- "Mrs. Bell nonetheless made
 4 statements to the Industrial Commission while
 5 represented by counsel that she has sustained an
 6 occupational disease caused by exposure to asbestos
 7 during employment with Hoechst Celanese Corporation
 8 and Pillowtex Corporation. The alleged occupational
 9 disease was mesothelioma."

10 The Court went on to note several other
 11 issues which are set forth in the opinion itself and
 12 we raised with the Court. I won't lay those out
 13 now, as it's already in the written decision. But
 14 the Court overruled -- excuse me -- the Court
 15 sustained the objection and did not permit
 16 additional questioning with respect to the Bell
 17 decision, which we note our exception to. Thank
 18 you.

19 THE COURT: And, Ms. Dean, did you want to
 20 add anything to that?

21 MS. DEAN: Within a minute or less, first,
 22 there was just a threshold issue about hearsay. This
 23 is a hearsay document quoting additional layers of
 24 hearsay. And when asked if there was an exception,
 25 none was offered. And under Rule 703 or 706 hearsay

<p>1 documents can be relied on, but this witness 2 exclusively indicated he had not. 3 And so I think on the hearsay level this 4 was a black and white issue. But there's also 5 layers of concern under 403, the relevance is 6 attenuated. The fact that someone believed or a 7 lawyer even believed that a client was exposed 8 doesn't mean an occupational medicine doctor with 9 training was somehow inaccurate in her statement 10 that she was not.</p> <p>11 And then there's all of this extra layers 12 of bringing in what the Industrial Board and the 13 North Carolina law permits, why the claim was 14 denied, which is undue confusion of time and 15 prejudice. One of the things explicitly noted by 16 counsel that he wanted to state is that her lawyer 17 allowed her to file this. What a lawyer in North 18 Carolina did in a different matter is truly 19 problematic.</p> <p>20 The last thing I'll note is Dr. Haber 21 indicated that by now there are literally hundreds 22 or well over 275 case series reports. The idea that 23 whatever relevance this has is significant given the 24 number of other cases I think is undermined by the 25 number of other cases.</p>	<p>1810</p> <p>1 MR. COOK: Weird echo? 2 THE COURT: -- resonant, weird echo. Is 3 there a microphone on the Elmo? 4 MR. COOK: Is there? 5 THE COURT: Is there a way to turn it off? 6 MR. COOK: Apparently there is. 7 THE COURT: Okay. Yeah, if we can figure 8 that out. All right. Anything else we need to put 9 on the record?</p> <p>10 MS. DEAN: Whittaker, Clark & Daniels 11 filed an answer and we filed a motion to strike -- 12 THE COURT: I saw that. 13 MS. DEAN: -- on their affirmative 14 defenses. I don't think that needs to be heard at 15 this time, but I want to make the Court aware that 16 that's out there.</p> <p>17 THE COURT: I think all of those issues 18 probably get ironed out depending on what jury 19 instructions we give, so -- and the jury will not be 20 seeing the Complaint and the Answer. That's my 21 understanding.</p> <p>22 MS. DEAN: Then we got in to WCD what we 23 think is an accurate depiction of where we are with 24 jury instructions. We're just waiting to hear back 25 and have that for you.</p>
<p>1811</p> <p>1 MR. COOK: And if I could just very 2 briefly in response to that note, you know, Ms. Dean 3 has raised a number of those. Thirty-three of those 4 come from the Moline 2020 case series. There are 5 additional ones that Dr. Moline has raised. And 6 then Dr. Emory, there are similar concerns with 7 respect to Dr. Emory's publication that there are 8 with Dr. Moline's, that there are individuals 9 included in those studies that had exposures to 10 asbestos which are not identified in the study, and 11 the authors are claiming that it's only exposure to 12 cosmetic talc.</p> <p>13 We think the examination with respect to 14 Bell, what we have is one individual that we've been 15 able to find out their name and what their -- what 16 their testimony was under, and we found 100 percent 17 of those individuals had sworn to an alternative 18 exposure to asbestos. And we think that's something 19 that's relevant, highly relevant, and should be 20 considered by the jury. Thank you.</p> <p>21 THE COURT: And the objection is still 22 sustained. Mr. Cook, any time you walk over by your 23 Elmo --</p> <p>24 MR. COOK: Yes.</p> <p>25 THE COURT: -- we get this really --</p>	<p>1813</p> <p>1 THE COURT: Great. All right. So with 2 that, have a good night and see you early tomorrow. 3 (Proceedings adjourned at 4:49 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CERTIFICATE

2

3 I, Margaret R. Golden, do hereby certify that I
4 reported all proceedings adduced in the foregoing matter
5 and that the foregoing transcript pages constitutes a full,
6 true, and accurate record of said proceedings to the best
7 of my ability.

8

9 I further certify that I am neither related to
10 counsel or any part to the proceedings nor have any
11 interest in the outcome of the proceedings.

12

13 IN WITNESS HEREOF, I have hereunto set my hand this
14 20th day of February, 2023.

15

16

17

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19

20 /S/ Margaret R. Golden

21 Georgia License No. 5409-06355-5897-1392

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